

AMENDED IN ASSEMBLY APRIL 13, 2016

AMENDED IN ASSEMBLY APRIL 6, 2016

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 2895

**Introduced by ~~Committee on Labor and Employment~~ (Assembly
Members ~~Assembly Member~~ Roger Hernández ~~(Chair)~~, Chu,
Low, McCarty, and Thurmond)**

March 1, 2016

An act to amend, repeal, and add Section 6401.7 of the Labor Code, relating to employment safety.

LEGISLATIVE COUNSEL'S DIGEST

AB 2895, as amended, ~~Committee on Labor and Employment~~ Roger Hernández. Employee safety: injury prevention programs.

The California Occupational Safety and Health Act of 1973 establishes certain safety and other responsibilities of employers and employees. Violations of the act under certain circumstances are a crime.

The act requires every employer to establish, implement, and maintain an effective injury prevention program. The act requires the program to be written, except as specified, and to include certain elements. The act requires the employer to identify a person responsible for implementing the program and to correct unsafe and unhealthy conditions and work practices in a timely manner based on the severity of the hazard.

This bill would, commencing July 1, 2017, require an employer to keep a complete, updated copy of the written injury prevention program at each worksite and to make it available to any employee upon oral

request. The bill would also require an employer to provide a copy of the written injury prevention program, or a summary thereof, to each employee and each new hire, as specified.

The bill also would require an employer who receives a written request for a copy of the written injury prevention program from a current employee, or his or her authorized representative, to comply within 5 business days and to provide the copy at no cost. The bill would make a violation of this requirement an infraction and would impose a civil penalty for failure by an employer to comply with this requirement.

Because this bill creates a new crime, the bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 6401.7 of the Labor Code is amended to
2 read:

3 6401.7. (a) Every employer shall establish, implement, and
4 maintain an effective injury prevention program. The program
5 shall be written, except as provided in subdivision (e), and shall
6 include, but not be limited to, the following elements:

7 (1) Identification of the person or persons responsible for
8 implementing the program.

9 (2) The employer's system for identifying and evaluating
10 workplace hazards, including scheduled periodic inspections to
11 identify unsafe conditions and work practices.

12 (3) The employer's methods and procedures for correcting
13 unsafe or unhealthy conditions and work practices in a timely
14 manner.

15 (4) An occupational health and safety training program designed
16 to instruct employees in general safe and healthy work practices
17 and to provide specific instruction with respect to hazards specific
18 to each employee's job assignment.

1 (5) The employer's system for communicating with employees
2 on occupational health and safety matters, including provisions
3 designed to encourage employees to inform the employer of
4 hazards at the worksite without fear of reprisal.

5 (6) The employer's system for ensuring that employees comply
6 with safe and healthy work practices, which may include
7 disciplinary action.

8 (b) The employer shall correct unsafe and unhealthy conditions
9 and work practices in a timely manner based on the severity of the
10 hazard.

11 (c) The employer shall train all employees when the training
12 program is first established, all new employees, and all employees
13 given a new job assignment, and shall train employees whenever
14 new substances, processes, procedures, or equipment are introduced
15 to the workplace and represent a new hazard, and whenever the
16 employer receives notification of a new or previously unrecognized
17 hazard. An employer in the construction industry who is required
18 to be licensed under Chapter 9 (commencing with Section 7000)
19 of Division 3 of the Business and Professions Code may use
20 employee training provided to the employer's employees under a
21 construction industry occupational safety and health training
22 program approved by the division to comply with the requirements
23 of subdivision (a) relating to employee training, and shall only be
24 required to provide training on hazards specific to an employee's
25 job duties.

26 (d) The employer shall keep appropriate records of steps taken
27 to implement and maintain the program. An employer in the
28 construction industry who is required to be licensed under Chapter
29 9 (commencing with Section 7000) of Division 3 of the Business
30 and Professions Code may use records relating to employee training
31 provided to the employer in connection with an occupational safety
32 and health training program approved by the division to comply
33 with this subdivision, and shall only be required to keep records
34 of those steps taken to implement and maintain the program with
35 respect to hazards specific to an employee's job duties.

36 (e) (1) The standards board shall adopt a standard setting forth
37 the employer's duties under this section, on or before January 1,
38 1991, consistent with the requirements specified in subdivisions
39 (a), (b), (c), and (d). The standards board, in adopting the standard,
40 shall include substantial compliance criteria for use in evaluating

1 an employer's injury prevention program. The board may adopt
2 less stringent criteria for employers with few employees and for
3 employers in industries with insignificant occupational safety or
4 health hazards.

5 (2) Notwithstanding subdivision (a), for employers with fewer
6 than 20 employees who are in industries that are not on a
7 designated list of high hazard industries and who have a workers'
8 compensation experience modification rate of 1.1 or less, and for
9 any employers with fewer than 20 employees who are in industries
10 that are on a designated list of low hazard industries, the board
11 shall adopt a standard setting forth the employer's duties under
12 this section consistent with the requirements specified in
13 subdivisions (a), (b), and (c), except that the standard shall only
14 require written documentation to the extent of documenting the
15 person or persons responsible for implementing the program
16 pursuant to paragraph (1) of subdivision (a), keeping a record of
17 periodic inspections pursuant to paragraph (2) of subdivision (a),
18 and keeping a record of employee training pursuant to paragraph
19 (4) of subdivision (a). To any extent beyond the specifications of
20 this subdivision, the standard shall not require the employer to
21 keep the records specified in subdivision (d).

22 (3) (A) The division shall establish a list of high hazard
23 industries using the methods prescribed in Section 6314.1 for
24 identifying and targeting employers in high hazard industries. For
25 purposes of this subdivision, the "designated list of high hazard
26 industries" shall be the list established pursuant to this paragraph.

27 (B) For the purpose of implementing this subdivision, the
28 Department of Industrial Relations shall periodically review, and
29 as necessary revise, the list.

30 (4) For the purpose of implementing this subdivision, the
31 Department of Industrial Relations shall also establish a list of low
32 hazard industries, and shall periodically review, and as necessary
33 revise, that list.

34 (f) The standard adopted pursuant to subdivision (e) shall
35 specifically permit employer and employee occupational safety
36 and health committees to be included in the employer's injury
37 prevention program. The board shall establish criteria for use in
38 evaluating employer and employee occupational safety and health
39 committees. The criteria shall include minimum duties, including
40 the following:

1 (1) Review of the employer's periodic, scheduled worksite
2 inspections; investigation of causes of incidents resulting in injury,
3 illness, or exposure to hazardous substances; and investigation of
4 any alleged hazardous condition brought to the attention of any
5 committee member. When determined necessary by the committee,
6 the committee may conduct its own inspections and investigations.

7 (2) (A) Upon request from the division, verification of
8 abatement action taken by the employer as specified in division
9 citations.

10 (B) If an employer's occupational safety and health committee
11 meets the criteria established by the board, it shall be presumed to
12 be in substantial compliance with paragraph (5) of subdivision (a).

13 (g) The division shall adopt regulations specifying the
14 procedures for selecting employee representatives for
15 employer-employee occupational health and safety committees
16 when these procedures are not specified in an applicable collective
17 bargaining agreement. No employee or employee organization
18 shall be held liable for any act or omission in connection with a
19 health and safety committee.

20 (h) The employer's injury prevention program, as required by
21 this section, shall cover all of the employer's employees and all
22 other workers who the employer controls or directs and directly
23 supervises on the job to the extent these workers are exposed to
24 worksite and job assignment specific hazards. Nothing in this
25 subdivision shall affect the obligations of a contractor or other
26 employer that controls or directs and directly supervises its own
27 employees on the job.

28 (i) When a contractor supplies its employee to a state agency
29 employer on a temporary basis, the state agency employer may
30 assess a fee upon the contractor to reimburse the state agency for
31 the additional costs, if any, of including the contract employee
32 within the state agency's injury prevention program.

33 (j) (1) The division shall prepare a Model Injury and Illness
34 Prevention Program for Non-High-Hazard Employment, and shall
35 make copies of the model program prepared pursuant to this
36 subdivision available to employers, upon request, for posting in
37 the workplace. An employer who adopts and implements the model
38 program prepared by the division pursuant to this paragraph in
39 good faith shall not be assessed a civil penalty for the first citation

1 for a violation of this section issued after the employer's adoption
2 and implementation of the model program.

3 (2) For purposes of this subdivision, the division shall establish
4 a list of non-high-hazard industries in California. These industries,
5 identified by their Standard Industrial Classification Codes, as
6 published by the United States Office of Management and Budget
7 in the Manual of Standard Industrial Classification Codes, 1987
8 Edition, are apparel and accessory stores (Code 56), eating and
9 drinking places (Code 58), miscellaneous retail (Code 59), finance,
10 insurance, and real estate (Codes 60–67), personal services (Code
11 72), business services (Code 73), motion pictures (Code 78) except
12 motion picture production and allied services (Code 781), legal
13 services (Code 81), educational services (Code 82), social services
14 (Code 83), museums, art galleries, and botanical and zoological
15 gardens (Code 84), membership organizations (Code 86),
16 engineering, accounting, research, management, and related
17 services (Code 87), private households (Code 88), and
18 miscellaneous services (Code 89). To further identify industries
19 that may be included on the list, the division shall also consider
20 data from a rating organization, as defined in Section 11750.1 of
21 the Insurance Code, and all other appropriate information. The list
22 shall be established by June 30, 1994, and shall be reviewed, and
23 as necessary revised, biennially.

24 (3) The division shall prepare a Model Injury and Illness
25 Prevention Program for Employers in Industries with Intermittent
26 Employment, and shall determine which industries have historically
27 utilized seasonal or intermittent employees. An employer in an
28 industry determined by the division to have historically utilized
29 seasonal or intermittent employees shall be deemed to have
30 complied with the requirements of subdivision (a) with respect to
31 a written injury prevention program if the employer adopts the
32 model program prepared by the division pursuant to this paragraph
33 and complies with any instructions relating thereto.

34 (k) With respect to any county, city, city and county, or district,
35 or any public or quasi-public corporation or public agency therein,
36 including any public entity, other than a state agency, that is a
37 member of, or created by, a joint powers agreement, subdivision
38 (d) shall not apply.

39 (l) Every workers' compensation insurer shall conduct a review,
40 including a written report as specified below, of the injury and

1 illness prevention program (IIPP) of each of its insureds with an
2 experience modification of 2.0 or greater within six months of the
3 commencement of the initial insurance policy term. The review
4 shall determine whether the insured has implemented all of the
5 required components of the IIPP, and evaluate their effectiveness.
6 The training component of the IIPP shall be evaluated to determine
7 whether training is provided to line employees, supervisors, and
8 upper level management, and effectively imparts the information
9 and skills each of these groups needs to ensure that all of the
10 insured's specific health and safety issues are fully addressed by
11 the insured. The reviewer shall prepare a detailed written report
12 specifying the findings of the review and all recommended changes
13 deemed necessary to make the IIPP effective. The reviewer shall
14 be or work under the direction of a licensed California professional
15 engineer, certified safety professional, or a certified industrial
16 hygienist.

17 (m) This section shall remain in effect only until July 1, 2017,
18 and as of that date is repealed.

19 SEC. 2. Section 6401.7 is added to the Labor Code, to read:

20 6401.7. (a) Every employer shall establish, implement, and
21 maintain an effective injury prevention program. The program
22 shall be written, except as provided in subdivision (f), and shall
23 include, but not be limited to, the following elements:

24 (1) Identification of the person or persons responsible for
25 implementing the program.

26 (2) The employer's system for identifying and evaluating
27 workplace hazards, including scheduled periodic inspections to
28 identify unsafe conditions and work practices.

29 (3) The employer's methods and procedures for correcting
30 unsafe or unhealthy conditions and work practices in a timely
31 manner.

32 (4) An occupational health and safety training program designed
33 to instruct employees in general safe and healthy work practices
34 and to provide specific instruction with respect to hazards specific
35 to each employee's job assignment.

36 (5) The employer's system for communicating with employees
37 on occupational health and safety matters, including provisions
38 designed to encourage employees to inform the employer of
39 hazards at the worksite without fear of reprisal.

1 (6) The employer's system for ensuring that employees comply
2 with safe and healthy work practices, which may include
3 disciplinary action.

4 (b) The employer shall correct unsafe and unhealthy conditions
5 and work practices in a timely manner based on the severity of the
6 hazard.

7 (c) The employer shall train all employees when the training
8 program is first established, all new employees, and all employees
9 given a new job assignment, and shall train employees whenever
10 new substances, processes, procedures, or equipment are introduced
11 to the workplace and represent a new hazard, and whenever the
12 employer receives notification of a new or previously unrecognized
13 hazard. An employer in the construction industry who is required
14 to be licensed under Chapter 9 (commencing with Section 7000)
15 of Division 3 of the Business and Professions Code may use
16 employee training provided to the employer's employees under a
17 construction industry occupational safety and health training
18 program approved by the division to comply with the requirements
19 of subdivision (a) relating to employee training, and shall only be
20 required to provide training on hazards specific to an employee's
21 job duties.

22 (d) The employer shall keep appropriate records of steps taken
23 to implement and maintain the program. An employer in the
24 construction industry who is required to be licensed under Chapter
25 9 (commencing with Section 7000) of Division 3 of the Business
26 and Professions Code may use records relating to employee training
27 provided to the employer in connection with an occupational safety
28 and health training program approved by the division to comply
29 with this subdivision, and shall only be required to keep records
30 of those steps taken to implement and maintain the program with
31 respect to hazards specific to an employee's job duties.

32 (e) (1) An employer shall keep an up-to-date complete copy of
33 the written injury prevention program referred to in subdivision
34 (a) at each worksite, and shall make it available for inspection by
35 any current employee or by the division upon an oral request. The
36 worksite copy shall be in English, and, if the language spoken by
37 the majority of the employees at the worksite is not English, the
38 worksite copy shall also be in the language spoken by the majority
39 of the employees at the worksite.

1 (2) Upon the operative date of this section, an employer shall
2 provide a complete copy of the written injury prevention program
3 referred to in subdivision (a) to each current employee, and, after
4 the operative date of this section, an employer shall provide a
5 complete copy of the written injury prevention program to each
6 new employee at the time of hire. The copy of the written injury
7 prevention program shall be in English or, if the language spoken
8 by the majority of the employees at the worksite is not English,
9 an employee who requests a copy of the written injury prevention
10 program shall be provided with a copy in the language spoken by
11 the majority of the employees at the worksite. If the written injury
12 prevention program referred to in subdivision (a) exceeds a total
13 of 50 pages, the employer, in lieu of providing a copy as required
14 under this paragraph, shall provide a complete summary that
15 addresses the requirements referred to in subdivision (a), which
16 shall be in English or, if the language spoken by the majority of
17 the employees at the worksite is not English, an employee who
18 requests a copy of the written injury prevention program shall be
19 provided with a summary that is in the language spoken by the
20 majority of the employees at the worksite.

21 (3) An employer who receives a written request for a complete
22 copy of the written injury prevention program referred to in
23 subdivision (a) from a current employee, or his or her authorized
24 representative, shall comply with the request as soon as practicable,
25 but no later than five business days from the date a request pursuant
26 to this paragraph is received. The copy of the written injury
27 prevention program shall be provided to the current employee, or
28 to his or her authorized representative, at no cost. An employer
29 may designate the person to whom a request under this paragraph
30 is to be made. A violation of this paragraph is an infraction.
31 Impossibility of performance, not caused by or a result of a
32 violation of law, shall be an affirmative defense for an employer
33 in any action alleging a violation of this paragraph. For purposes
34 of this paragraph, an “authorized representative” means a person
35 authorized in writing by a current employee to receive a copy of
36 the written injury prevention program referred to in subdivision
37 (a).

38 (4) A failure by an employer to comply with paragraph (3)
39 entitles an employee to recover a seven-hundred-fifty-dollar (\$750)
40 penalty from the employer.

(f) (1) The standards board shall adopt a standard setting forth the employer's duties under this section, on or before January 1, 1991, consistent with the requirements specified in subdivisions (a), (b), (c), (d), and (e). The standards board, in adopting the standard, shall include substantial compliance criteria for use in evaluating an employer's injury prevention program. The board may adopt less stringent criteria for employers with few employees and for employers in industries with insignificant occupational safety or health hazards.

(2) Notwithstanding subdivision (a), for employers with fewer than 20 employees who are in industries that are not on a designated list of high hazard industries and who have a workers' compensation experience modification rate of 1.1 or less, and for any employers with fewer than 20 employees who are in industries that are on a designated list of low hazard industries, the board shall adopt a standard setting forth the employer's duties under this section consistent with the requirements specified in subdivisions (a), (b), and ~~(e)~~ (c), except that the standard shall only require written documentation to the extent of documenting the person or persons responsible for implementing the program pursuant to paragraph (1) of subdivision (a), keeping a record of periodic inspections pursuant to paragraph (2) of subdivision (a), and keeping a record of employee training pursuant to paragraph (4) of subdivision (a). To any extent beyond the specifications of this subdivision, the standard shall not require the employer to keep the records specified in subdivision (d).

(3) (A) The division shall establish a list of high hazard industries using the methods prescribed in Section 6314.1 for identifying and targeting employers in high hazard industries. For purposes of this subdivision, the "designated list of high hazard industries" shall be the list established pursuant to this paragraph.

(B) For the purpose of implementing this subdivision, the Department of Industrial Relations shall periodically review, and as necessary revise, the list.

(4) For the purpose of implementing this subdivision, the Department of Industrial Relations shall also establish a list of low hazard industries, and shall periodically review, and as necessary revise, that list.

(g) The standard adopted pursuant to subdivision (f) shall specifically permit employer and employee occupational safety

1 and health committees to be included in the employer's injury
2 prevention program. The board shall establish criteria for use in
3 evaluating employer and employee occupational safety and health
4 committees. The criteria shall include minimum duties, including
5 the following:

6 (1) Review of the employer's periodic, scheduled worksite
7 inspections; investigation of causes of incidents resulting in injury,
8 illness, or exposure to hazardous substances; and investigation of
9 any alleged hazardous condition brought to the attention of any
10 committee member. When determined necessary by the committee,
11 the committee may conduct its own inspections and investigations.

12 (2) (A) Upon request from the division, verification of
13 abatement action taken by the employer as specified in division
14 citations.

15 (B) If an employer's occupational safety and health committee
16 meets the criteria established by the board, it shall be presumed to
17 be in substantial compliance with paragraph (5) of subdivision (a).

18 (h) The division shall adopt regulations specifying the
19 procedures for selecting employee representatives for
20 employer-employee occupational health and safety committees
21 when these procedures are not specified in an applicable collective
22 bargaining agreement. No employee or employee organization
23 shall be held liable for any act or omission in connection with a
24 health and safety committee.

25 (i) The employer's injury prevention program, as required by
26 this section, shall cover all of the employer's employees and all
27 other workers who the employer controls or directs and directly
28 supervises on the job to the extent these workers are exposed to
29 worksite and job assignment specific hazards. Nothing in this
30 subdivision shall affect the obligations of a contractor or other
31 employer that controls or directs and directly supervises its own
32 employees on the job.

33 (j) When a contractor supplies its employee to a state agency
34 employer on a temporary basis, the state agency employer may
35 assess a fee upon the contractor to reimburse the state agency for
36 the additional costs, if any, of including the contract employee
37 within the state agency's injury prevention program.

38 (k) (1) The division shall prepare a Model Injury and Illness
39 Prevention Program for Non-High-Hazard Employment, and shall
40 make copies of the model program prepared pursuant to this

1 subdivision available to employers, upon request, for posting in
2 the workplace. An employer who adopts and implements the model
3 program prepared by the division pursuant to this paragraph in
4 good faith shall not be assessed a civil penalty for the first citation
5 for a violation of this section issued after the employer's adoption
6 and implementation of the model program.

7 (2) For purposes of this subdivision, the division shall establish
8 a list of non-high-hazard industries in California. These industries,
9 identified by their Standard Industrial Classification Codes, as
10 published by the United States Office of Management and Budget
11 in the Manual of Standard Industrial Classification Codes, 1987
12 Edition, are apparel and accessory stores (Code 56), eating and
13 drinking places (Code 58), miscellaneous retail (Code 59), finance,
14 insurance, and real estate (Codes 60–67), personal services (Code
15 72), business services (Code 73), motion pictures (Code 78) except
16 motion picture production and allied services (Code 781), legal
17 services (Code 81), educational services (Code 82), social services
18 (Code 83), museums, art galleries, and botanical and zoological
19 gardens (Code 84), membership organizations (Code 86),
20 engineering, accounting, research, management, and related
21 services (Code 87), private households (Code 88), and
22 miscellaneous services (Code 89). To further identify industries
23 that may be included on the list, the division shall also consider
24 data from a rating organization, as defined in Section 11750.1 of
25 the Insurance Code, and all other appropriate information. The list
26 shall be established by June 30, 1994, and shall be reviewed, and
27 as necessary revised, biennially.

28 (3) The division shall prepare a Model Injury and Illness
29 Prevention Program for Employers in Industries with Intermittent
30 Employment, and shall determine which industries have historically
31 utilized seasonal or intermittent employees. An employer in an
32 industry determined by the division to have historically utilized
33 seasonal or intermittent employees shall be deemed to have
34 complied with the requirements of subdivision (a) with respect to
35 a written injury prevention program if the employer adopts the
36 model program prepared by the division pursuant to this paragraph
37 and complies with any instructions relating thereto.

38 (l) With respect to any county, city, city and county, or district,
39 or any public or quasi-public corporation or public agency therein,
40 including any public entity, other than a state agency, that is a

1 member of, or created by, a joint powers agreement, subdivision
2 (d) shall not apply.

3 (m) Every workers' compensation insurer shall conduct a
4 review, including a written report as specified below, of the injury
5 and illness prevention program (IIPP) of each of its insureds with
6 an experience modification of 2.0 or greater within six months of
7 the commencement of the initial insurance policy term. The review
8 shall determine whether the insured has implemented all of the
9 required components of the IIPP, and evaluate their effectiveness.
10 The training component of the IIPP shall be evaluated to determine
11 whether training is provided to line employees, supervisors, and
12 upper level management, and effectively imparts the information
13 and skills each of these groups needs to ensure that all of the
14 insured's specific health and safety issues are fully addressed by
15 the insured. The reviewer shall prepare a detailed written report
16 specifying the findings of the review and all recommended changes
17 deemed necessary to make the IIPP effective. The reviewer shall
18 be or work under the direction of a licensed California professional
19 engineer, certified safety professional, or a certified industrial
20 hygienist.

21 (n) This section shall become operative on July 1, 2017.

22 SEC. 3. No reimbursement is required by this act pursuant to
23 Section 6 of Article XIII B of the California Constitution because
24 the only costs that may be incurred by a local agency or school
25 district will be incurred because this act creates a new crime or
26 infraction, eliminates a crime or infraction, or changes the penalty
27 for a crime or infraction, within the meaning of Section 17556 of
28 the Government Code, or changes the definition of a crime within
29 the meaning of Section 6 of Article XIII B of the California
30 Constitution.